BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of: SIR MORTGAGE & FINANCE OF ARIZONA, INC., an Arizona corporation, GREGORY M. SIR (a/k/a "GREG SIR"), and ERIN M. SIR, husband and wife, Respondents.	DOCKET NO. S-20703A-09-0461 **SECURITIES DIVISION SUPPLEMENTAL RESPONSE TO RESPONDENTS' MOTION TO VACATE TEMPORARY ORDER** **Argument Date: December 8, 2009** **Argument Time: 9:30 a.m.**

The Division provides its supplemental response[1] to RESPONDENTS' October 24, 2009 Motion to Vacate Temporary Order to Cease and Desist ("Motion") as ordered in the Administrative Law Judge's ("ALJ") Second Procedural Order and requests that the Motion be denied.[2]

A. The TC&D Should Not Be Vacated Because It Only Requires Respondents to Cease and Desist From Violating the Securities Act

TC&D does not prevent respondents from operating their mortgage business. It: (a) only requires RESPONDENTS to comply with the Arizona Securities Act ("Act"); and (b) puts RESPONDENTS and the public on notice of conduct that the Division believes violates the Act.

Contrary to respondents' argument, it is not "**extraordinary and onerous**" for the Division to direct respondents to stop violating the Act. (*See*, Motion, p.2:25-26)(emphasis

[1] The Division filed a short response to RESPONDENTS' Motion titled "Securities Division's Response to Respondents' Motion to Dismiss" on October 26, 2009 on account of the previously scheduled October 28, 2009 Pre-Hearing Conference.

[2] The Division is filing a separate response to RESPONDENTS' November 3, 2009 "Supplement to Motion to Vacate" (the "Supplemental Motion") that raises a new scheduling argument, and RESPONDENTS' November 4, 2009 "Request to Alter Schedule in Second Procedural Order."

added). As a result, the Motion is necessarily an admission that RESPONDENTS cannot operate their mortgage business without violating the Act. Thus, the Motion should be denied.

B. The Public Welfare Requires the ALJ to Deny the Motion

Respondents' request for the ALJ to summarily vacate the TC&D, and permit them to continue to sell their loan investments in alleged violation of the Act is based on the bald allegation that the Division failed to consider whether issuing the TC&D on September 24, 2009 promoted the public welfare. (Motion, p.2:25-26). Other than a self-serving letter dated July 15, 2009 that ignores many vital facts reflected in RESPONDENTS' own business records, respondents' Motion is not supported by any evidence.

TC&D's are issued by the Division in cases like this when there are alleged ongoing violations of the Act that require "immediate action." *See*, R14-4-307(A). Further, A.R.S. § 44-2302(1) states that:

> If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission under this chapter, the commission may, **in its discretion**:
>
> 1. **Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any other act in furtherance of the act, practice or transaction** ... (emphasis added).

Here, immediate action was required because RESPONDENTS were offering and selling the unregistered loan investments in alleged violation of the Act.

Regarding exigent circumstances, RESPONDENTS sold a $40,000 loan investment to an Arizona investor on August 13, 2009. (**TC&D, ¶17**). RESPONDENTS also issued a $200,000 loan on or about August 14, 2009. Respondents sold a fifty percent interest in that August 2009 loan to an Illinois investor for approximately $100,000 documented, in part, by a fractionalized deed of trust recorded with the Maricopa County Recorder's Office on or about September 10,

2009 (the "August Loan Investment"). (*See e.g.*, **Tab "1,"** September 10, 2009 fractionalized deed of trust resulting from the $100,000 August Loan Investment).[3]

Throughout the Division's pre-filing investigation, RESPONDENTS also repeatedly refused to advise the Division whether they were raising money from loan investors. (*See also*, **Tabs "2" to "5"**). They were. **(TC&D, ¶17)**. Importantly, RESPONDENTS do not even suggest that they will actually change the way the offer and sell the loan investments as reflected in the TC&D if the TC&D is vacated.

RESPONDENTS further claim that their "**small business**" is being financially devastated by the existence of the TC&D. (Supplemental Motion, p.2:11)(emphasis added). This unsupported assertion constitutes an admission that RESPONDENTS cannot operate their mortgage business without a constant influx of investor money. However, regarding RESPONDENTS' pre-TC&D loan investments, from just 2006 to 2008, respondents closed $155,275,912.58 in loans funded in whole or in part with investor money, or: (a) $69,864,500 in 2006; (b) $58,942,500.99 in 2007; and (c) $26,468,911.59 in 2008.[4] (***See e.g.*, TC&D, ¶¶38-41**).

Further, RESPONDENTS' assertion that their business is being devastated by the existence of the TC&D is belied by the unsupported arguments supporting their Motion. For instance, RESPONDENTS assert that their mortgage business has been negatively "impacted by current market conditions." (Motion, p.1:21-23). Additionally, in response to the direct question

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[3] From approximately March 2009, the Division has requested information and documents regarding the loan investments "to the present" date. During this time, RESPONDENTS did provide relevant information to the Division, albeit in piecemeal fashion totaling approximately 2,300 pages. (*See*, Motion, p.2:12-14). RESPONDENTS only identified the existence of the loan underlying August Loan Investment to the Division through a letter from their counsel dated October 9, 2009, from which the Division was able to determine by searching public records that RESPONDENTS had, in fact, sold the August Loan Investment.

[4] In addition, RESPONDENTS provided information to the Division on October 9, 2009, that states that they closed approximately $258,472,822.42 in loans funded in whole or in part with investor money, from just 2002 to 2005, and in 2009 prior to the issuance of the TC&D, or: (a) $36,859,600 in 2002; (b) $54,986,000 in 2003; (c) $67,182,500 in 2004; (d) $95,103,722 in 2005; and (e) $4,341,000 in 2009. Thus, RESPONDENTS' "small business" issued approximately $413,748,735 in loans funded in whole or in part with investor money from just 2002 to just prior to the TC&D. This number could exceed a half a billion dollars given respondents' boastful admission that they have been conducting their loan investment business, "[f]or the last twelve years" or since approximately 1997. (Motion, p.1:19-25).

of whether RESPONDENTS were continuing to raise money from investors, RESPONDENTS' counsel provided the following non-answer:

> In your letter you ask whether Sir Mortgage and/or Greg Sir are presently/continuing to raise money to fund new loans. I don't want to get hung up on words, but I think I appreciate the information you are seeking.
>
> Mr. Sir informs us that there are very few viable lending opportunities these days. There are no new loan commitments at this time. A loan did close recently, but it was funded by the company's credit facility [i.e., a loan to RESPONDENTS from a commercial bank].

(**Tab 3**). RESPONDENTS' Answer to the TC&D even claims that losses incurred by loan investment investors "were caused by the decline in real estate values." (**Answer, p.11, ¶MM**). Thus, RESPONDENTS acknowledge that the recent economic decline is purportedly hurting their business, rather than the fact they have been ordered to comply with the Act. In contrast, RESPONDENTS should not be allowed to allegedly violate the Act because our economy is in the midst of an economic recession or long recovery.

That respondents will begin selling the loan investments again if the TC&D is vacated is demonstrated by the conduct set forth in the TC&D, their actions prior to the issuance of the TC&D and the unsupported factual and legal arguments contained in their Motion. (**TC&D, ¶¶42-51, 57-58**). Based on the foregoing, the Division requests the ALJ to deny the Motion.

C. <u>The Motion Ignores Vital Facts and Applicable Law</u>

Respondents support their Motion by citing R14-4-307(A). Neither that rule, nor any other rule or statute applicable to the Act allows the ALJ to summarily vacate the TC&D without consideration of the evidence referenced in the TC&D.

The proper procedure is for the ALJ to conduct the hearing set to begin on February 1, 2010 as agreed to by counsel for the parties at the October 28, 2009 Pre-Hearing Conference, and to issue proposed findings of fact and conclusions of law for the Commissions' consideration. (*See e.g.*, R14-3-110(A),(B) regarding hearing officer recommendations; A.R.S. § 41-

1061(C)("Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.").

Because the Act does not permit the ALJ to summarily vacate the TC&D, or permit the respondents to violate the Act without having considering the evidence specified in the TC&D, the Motion should be denied.

Regardless, the ALJ should deny the Motion because: (1) respondents were offering and selling unregistered securities in the form of investment contracts and notes in violation of the Act; (2) respondents offered and sold the investments during the Division's investigation and, as noted above, up to the date that the Division was forced to file the TC&D; and (3) respondents "*fraudulently*" sold at least seven of the loan investments totaling approximately $634,000.80.[5] **(TC&D, ¶¶42-51)**.

1. <u>The Loan Investments Are Unregistered Investment Contract Securities</u>.

The detailed allegations of TC&D establish that respondents sold unregistered[6] securities within Arizona in the form of investment contracts. **(TC&D, ¶¶11-37)**. A "security" is defined by A.R.S. § 44-1801(26) as any "investment contract." Under the Supreme Court's decision in *S.E.C. v. Howey*, 328 U.S. 293, 300-301, 66 S.Ct. 1100, 1103-04 (1946), an investment contract exists if there is: (1) an investment of money, (2) in a common enterprise, (3) with profits based solely on the efforts of others.[7] The word "solely" in the last element of the *Howey* test has since been uniformly construed to mean "substantially." *S.E.C. v. Glenn W. Turner Enterprises*, 474

[5] The registration and fraud claims in this case are based on *strict liability*. The Division does not have to prove traditional elements like intent, causation, damages or reliance. *See e.g., State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604 (1980); *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887 (App.1981); *Barnes v. Vozack*, 113 Ariz. 269, 550 P.2d 1070 (1976); *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131 (1986).

[6] Respondents' loan investments were not registered with the Division as securities. **(TC&D, ¶¶52-54)**. Respondents admit they were not registered with the Division as securities salesman or dealers. **(Answer, ¶¶2, 3)**. Respondents have the burden of proving that the loan investments are exempt from registration. *See*, A.R.S. § 44-2033. In this case, at a minimum, the scope and magnitude of RESPONDENTS' offers and sales of the loan investments is inconsistent with, for instance, small, private placement based exemptions. **(TC&D, ¶¶38-41)**.

[7] In *Howey*, the Court held that investors who purchased fractional interests/lots in an orange plantation expected profits solely from the efforts of the promoters.

F.2d 476, 482 (9th Cir. 1973); *Sullivan v. Metro Productions, Inc.*, 150 Ariz. 573, 577, 724 P.2d 1242, 1246 (App. 1986)("The Ninth Circuit, in Turner Enterprises, supra, noted that the word 'solely' in the *Howey* test is not to be read as a literal limitation on the definition. That court held 'we adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.'...The emphasis in determining whether an investment is a security is on economic reality.").

Two tests have been developed to determine the existence of the "common enterprise" element: (1) horizontal commonality; and (2) vertical commonality. *Daggert v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148 (App. 1986). The commonality element is satisfied if horizontal *or* vertical commonality is demonstrated. *Id.*, 152 Ariz. at 566, 733 P.2d at 1149. Horizontal commonality requires a pooling of investor funds collectively managed by the promoter. *Id.* at 565, 733 P.2d at 1148. Vertical commonality is established if there is a correlation between the potential profits of the investor and the promoter. *Id.*

Arizona courts agree that the "investment contract" definition of a security embodies a flexible principal, "that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits." *Nutek Information Systems, Inc. v. Arizona Corporation Commission*, 194 Ariz. 104, 108, 977 P.2d 826, 830 (App.1998). This flexible approach recognizes the investor's economic reality and maximizes the protection that the Arizona Securities Act provides to Arizona investors. *Rose v. Dobras*, 128 Ariz. 209, 212, 624 P.2d 887, 890 (App.1981)("The supreme court has consistently construed the definition of 'security' liberally.").[8]

[8] Also, the Preamble to the Securities Act states:

> The intent and purpose of this Act is for the protection of the public, the preservation of fair and equitable business practices, the suppression of fraudulent or deceptive practices in the sale or purchase of securities, and the prosecution of persons engaged in fraudulent or deceptive practices in the sale or purchase of securities. This Act shall not be given a narrow or restricted interpretation or construction, but shall be liberally construed as a remedial measure in order not to defeat the purpose thereof.

Here, investors invested money with RESPONDENTS by purchasing loan interests from them with an expectation of profit in the form of a percentage of loan borrower interest payments of approximately eleven to fourteen percent per year. (*See e.g.*, **TC&D, ¶¶11, 14-15**). The TC&D also establishes both horizontal and vertical commonalities. Without limitation, investors provided their investment money directly to RESPONDENTS, who then pooled the investor money together to fund large, single loans (*i.e.*, horizontal). (**TC&D, ¶15-16**). RESPONDENTS also share all monthly loan payments with investors (*i.e.*, vertical) (**TC&D, ¶21-22**). RESPONDENTS also retained interests in the fractionalized notes and/or deeds of trust assigned to often multiple investors (*i.e.*, vertical). (**TC&D, ¶13, 18**). (*See e.g.*, **Tab 1; TC&D, ¶¶15-16**). These facts are ignored in the letter attached to the Motion.

Finally, the investors expected a profit based on the solely on the undeniably significant "expert" loan management efforts of RESPONDENTS. (**TC&D, ¶¶9, 23-37**). RESPONDENTS had investors execute a de-facto power of attorney that permits RESPONDENTS to perform a myriad of important loan related tasks on behalf of investors. (**TC&D, ¶21, 24**). Because the loan investments constitute investment contracts and notes under A.R.S. § 44-1801(26), the *Howey* test, Arizona law and the detailed facts alleged in the TC&D, the ALJ should deny the Motion.

2. <u>The Loan Investments Are Note Securities for Purposes of the Division's Registration and Fraud Claims</u>.

Here, the loan investments are documented in part by RESPONDENTS' assignment of fractionalized loan notes and deeds of trust. (**TC&D, ¶¶13-15**). The Act defines a security as "any note." A.R.S. § 44-1801(26). The TC&D alleges that RESPONDENTS committed both registration and fraud violations of the Act.

The Arizona Supreme Court holds that for purposes of the registration claims asserted in the TC&D under A.R.S. §§ 44-1841 and 1842, all notes are securities that must be registered unless an exemption applies. *See State v. Tober*, 173 Ariz. 211, 211-212, 841 P.2d 206, 206-07 (1992). Here, each investment involves several deeds of trust and fractionalization precluding

reliance on A.R.S. § 44-1843(A)(10). Thus, the loan investments are note securities for purposes of the Division's registration claims, and the Motion should be denied.

The Arizona Court of Appeals has held that whether a note is a security for purposes of a fraud claim under the Act should be decided by applying the analysis set forth in the Supreme Court's decision of *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990). *See, MacCollum v. Perkinson*, 185 Ariz. 179, 186, 913 P.2d 1097, 1104 (App. 1996). In *Reves*, the Supreme Court identified certain types of notes that are excluded from the definition of a security. *See Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990).[9] Under *Reves*, any promissory note is presumed to be a security unless it bears a strong "family resemblance" to a judicially crafted list of non-securities. Here, the only possibly applicable *Reves* exceptions would be: (1) a note secured by a mortgage on a home; or (2) a note secured by a lien on a small business or some of its assets. *Reves*, 494 U.S. at 65 citing *Exch. Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1138 (2d Cir 1976). However, these exceptions do not apply, in part, because: (a) the investors at issue in this case are not professional mortgage bankers who issue loans as their primary occupation-if they were, they would not agree to have RESPONDENTS manage the essential aspects of the loan investments (**TC&D, ¶¶19-37**); (b) the notes purchased by investors are generally long term and range up to ten years (**TC&D, ¶11**); (c) although the notes are secured by fractionalized deeds of trust, the loan investments are risky as evidenced, in part, by the seven allegedly "*fraudulently*" sold loan investments and the fact that the loans are often issued to start-up, or unproven borrowers (**TC&D, ¶¶42-51**); and (d) the notes purchased by the investors are not related to their own home mortgages or business loans, but are purchased solely for their passive, profit potential of approximately eleven percent per year, minus RESPONDENTS' various fees and loan interest participation. (**TC&D, ¶¶11, 21, 22**). That the loan investments are securities is further demonstrated by the fact

[9] The Arizona Court of Appeals has instructed that the analysis in *Reves* should be applied only in the context of an alleged violation of the antifraud statute, A.R.S. § 44-1991(A). *MacCollum v. Perkinson*, 185 Ariz. 179, 186 (Ariz. Ct. App. 1996).

that RESPONDENTS, their attorneys and the investors referred to the loan investments as "investments." (***See e.g.*, TC&D, ¶35**).

The *Reves* case also allows for another exception depending on the: (a) motivation of the parties including whether the investor is interested primarily in the profit the note is expected to generate; (b) plan of distribution; (c) the reasonable expectations of the investing public; and (d) whether another regulatory scheme is applicable such that application of the Act is unnecessary. *Reves*, 494 U.S. at 66-67. Applied here, the investors purchased the loan investments solely for their passive profit potential such that investors can expect the protections afforded to them under the Act. The scope and magnitude of RESPONDENTS' loan investment offering is inconsistent with small, or isolated investment offerings to which the Act may not apply.

Finally, RESPONDENTS argue that this matter is better resolved by the Arizona Department of Financial Institutions ("DFI"). (Motion, p.1:16-23). However, the DFI is not tasked with enforcing violations of the Act. The Division is also not asserting claims based on Arizona mortgage banking laws. *Reves*, 494 U.S. at 66-67. Again, respondents' Motion fails to cite any authority to support their argument that the DFI has exclusive jurisdiction over claims against licensed mortgage bankers for illegally selling investments in violation of the Act. Thus, respondents' reliance on the fact that DFI regulates mortgage bankers lacks merit and should be ignored. Because RESPONDENTS' loan investments are also note securities under the allegations of the TC&D, the Act and applicable law, the Motion should be denied. [10]

C. <u>Conclusion</u>.

Because: (a) the TC&D merely requires RESPONDENTS' to comply with the law, and puts RESPONDENTS and the public on notice of conduct that allegedly violates the Act; (b) the TC&D protects the public welfare for the reasons discussed above; and (c) RESPONDENTS'

[10] As noted by the letter attached to their Motion, the majority of the letter analyzes why RESPONDENTS' claim that the loan investments do not constitute "real property investment contract" securities. However, the TC&D does not allege that the loan investments are "real property investment contract" securities.

Motion ignores important facts and is contrary to law, the Division respectfully requests that the Motion be denied.

RESPECTFULLY SUBMITTED this 12th day of November, 2009.

Mike Dailey, Esq.
Staff Attorney
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007

ORIGINAL AND THIRTEEN (13) COPIES of the foregoing filed this 12th day of November, 2009 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered this 12th day of November, 2009 to:

Marc E. Stern, Administrative Law Judge
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing mailed this 12th day of November, 2009 to:

Paul Roshka, Esq.
Tim Sabo, Esq.
Roshka DeWulf & Patten
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004
Attorneys for Respondents

Tab "1"

DHI Title

When recorded, return to:
Sir Mortgage & Finance of Arizona, Inc.
3333 E. Camelback Road
Suite #185
Phoenix, AZ 85018
Attn: Loan No. **29-1376**
15409120250-013

ASSIGNMENT OF BENEFICIAL INTEREST UNDER DEED OF TRUST

DATED: **09/01/2009**

FOR VALUE RECEIVED, the undersigned, as Beneficiary or successor thereto, hereby grants, conveys and transfers to:

J. [redacted] Trustees of the [redacted] Defined Contribution Plan U/A/DTD August 18, 2006, as to an undivided 50.000% interest

Pursuant to Section 33-404 ARS, the names and addresses of the Beneficiaries are available through Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation, 3333 E. Camelback, Suite #185 Phoenix, AZ 85018

all beneficial interest under that Deed of Trust, Assignment of Rents and Security Agreement dated **08/21/2009** executed by [redacted] husband and wife as community property with **right of survivorship**, Trustor(s), to **Grand Canyon Title Agency, an Arizona Corporation as Trustee**, and recorded August 31, 2009 as Instrument No. 20090811220 in the records of **Maricopa County**, Arizona; which affects the following described real property:

SEE ATTACHED EXHIBIT "A"

TOGETHER with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest due or to become due thereunder, and all rights accrued or to accrue thereunder.

IN WITNESS WHEREOF, said Beneficiary has signed this instrument as of this 1st day of September, 2009

SIR MORTGAGE & FINANCE OF ARIZONA, INC. AN ARIZONA CORPORATION

By: Gregory M. Sir
Its: President

Address of Assignor:

Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation Inc.
3333 E. Camelback, Suite #185
Phoenix, AZ 85018

STATE OF ARIZONA)
) ss
County of **Maricopa**)

This instrument was acknowledged before me this 1st day of September, 2009
By Gregory M. Sir, President of Sir Mortgage & Finance of Arizona, Inc., an Arizona Corporation, on behalf of said corporation

Notary Public

My commission expires: 12/17/2012

OFFICIAL SEAL
PATRICIA A. ROBERSON
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Dec. 17, 2012

Tab "2"

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

June 10, 2009

VIA EMAIL & U.S. MAIL
Paul Roshka, Esq.
Roshka DeWulf & Patten
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004

Re: *In re Sir Mortgage & Finance of Arizona, Inc.*, File No. 9699

Dear Paul:

In addition to the requests for information we discussed yesterday, please let me know in writing by at least Monday June 15, 2009 whether Sir Mortgage and/or Greg Sir are presently/continuing to raise money to fund new loans. Thank you.

Sincerely,

Mike Dailey

Tab "3"

Micheal Dailey

From: Paul Roshka [roshka@rdp-law.com]
Sent: Monday, June 15, 2009 5:55 PM
To: Micheal Dailey
Subject: Sir Mortgage

Hello Michael. I write in response to your June 10, 2009 letter.

In your letter you ask whether Sir Mortgage and/or Greg Sir are presently /continuing to raise money to fund new loans. I don't want to get hung up on words, but I think I appreciate the information you are seeking.

Mr. Sir informs us that there are very few viable lending opportunities these days. There are no new loan commitments at this time. A loan did close recently, but it was funded by the company's credit facility.

I anticipate being able to provide before I leave town Wednesday afternoon for a couple of days off the responses to the questions you asked when we met recently.

Thanks. I'll be in the office tomorrow.

Paul

Paul J. Roshka, Esq.
ROSHKA DeWULF & PATTEN, PLC
One Arizona Center
400 E. Van Buren Street, Suite 800
Phoenix, AZ 85004
Phone: 602-256-6100
Fax: 602-256-6800
Email: roshka@rdp-law.com

Tab "4"

Finally, in your July 7, 2009 voicemail message, you ask for Sir Mortgage's agreement that no lender funds will be used for any new loans until this matter is resolved. Early next week when you received the above-captioned documents, you will also receive a letter from us that will demonstrate that Sir Mortgage is not offering or selling securities. We think it is appropriate that you review this correspondence before asking for such a concession from Sir Mortgage.

We hope you will promptly review the information provided to you when it is delivered to you early next week. I will be out of the country starting July 18th for the balance of the month. We would like to discuss the letter you will be receiving from us before I go on vacation. We suggest meeting any time Wednesday or Thursday morning. Mr. Sir has authorized us to inform you that he will not fund any new loans with lender monies before we meet next week.

In the meantime, if you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

Paul J. Roshka, Jr.
For the Firm

PJR:rba

cc: Sir Mortgage & Finance of Arizona, Inc. (via email/U. S. mail)
Ronald Baran, Special Investigator (via U. S. mail & facsimile 602-594-7415)
Timothy J. Sabo, Esq.

Sir.ACC/ltr/Dailey05.doc

Tab "5"

Micheal Dailey

From: Paul Roshka [roshka@rdp-law.com]
Sent: Wednesday, June 17, 2009 2:20 PM
To: Micheal Dailey
Cc: Ronald Baran; Joyce Goodwin; Tim Sabo
Subject: RE: Sir Mortgage

Hello Mike.

I'm not going to be able to get you the response by the time I leave town very shortly. Sorry for the delay. You'll have it Monday. If that's a problem please let me know.

I'll pass the email you just sent me along to Mr. Sir, but wonder why you apparently think money is being raised at this time. Please let me know what your concerns are as your reference to a TC&D suggests to me that you are very concerned about something. I don't see this matter that way but want to be sensitive to your issues.

I'll be watching my emails and available to return calls over the next couple of days. Please let me know if you feel we need to speak before I return. My cell is 602-920-4128.

Thanks.

Paul

Paul J. Roshka, Esq.
ROSHKA DeWULF & PATTEN, PLC
One Arizona Center
400 E. Van Buren Street, Suite 800
Phoenix, AZ 85004
Phone: 602-256-6100
Fax: 602-256-6800
Email: roshka@rdp-law.com

From: Micheal Dailey [mailto:MDailey@azcc.gov]
Sent: Wednesday, June 17, 2009 1:52 PM
To: Paul Roshka